

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANNY L. BALL,)	4:07CV3224
)	
Petitioner,)	
v.)	
)	MEMORANDUM
NEBRASKA DEPARTMENT OF)	AND ORDER
CORRECTIONS,)	
)	
Respondent.)	

The petitioner has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, an application to proceed in forma pauperis, a motion for appointment of counsel, and copies of his institutional trust account statement.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. 28 U.S.C. § 1914(a). The court has reviewed the application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1)-(2). (The court recognizes that the provisions of 28 U.S.C. § 1915(b) do not apply to habeas cases. *See Malave v. Hedrick*, 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because the petitioner's trust account shows that the petitioner had an average monthly balance of \$100 or more in the petitioner's account for the six-month period immediately preceding the filing of the petition, the court concludes that the petitioner must be required to pay the \$5.00 filing fee because the petitioner has the financial ability to do so. See 28 U.S.C. § 1915(a). No further review of this case shall take place until the fee is paid.

IT IS THEREFORE ORDERED that:

1. The petitioner's application to proceed in forma pauperis (filing 2) is denied.

2. The petitioner is granted until November 30, 2007, to pay the \$5.00 filing fee. The petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.
3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: November 30, 2007: deadline for petitioner to pay \$5.00 filing fee.
4. No further review of this case shall take place until the filing fee is paid.

October 30, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge